



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 19-3; FCC 19-9]

Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission adopted a Notice of Proposed Rulemaking, in which it sought comment on several proposals designed to improve the rules and procedures to select and license competing applications for new noncommercial educational (NCE) broadcast stations and low power FM (LPFM) stations.

DATES: Comments may be filed on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments may be filed on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested parties may submit comments and reply comments, identified by MB Docket No. 19-3, by any of the following methods:

- *Federal Communications Commission's Website:* <http://www.fcc.gov/ecfs>. Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432. For detailed instructions for submitting comments and

additional information on the rulemaking process, see the supplementary information section of this document.

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418-2721; Lisa Scanlan, Deputy Division Chief, Media Bureau, Audio Division, (202) 418-2704; Amy Van de Kerckhove, Attorney Advisor, Media Bureau, Audio Division, (202) 418-2726.

For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202-418-2918, or via the Internet at Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), MB Docket No. 19-3; FCC 19-9, adopted on February 14, 2019, and released on February 15, 2019. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at http://fjallfoss.fcc.gov/edocs_public/ or via the FCC's Electronic Comment Filing System (ECFS) website at <http://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

The *NPRM* may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on such requirements, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public

Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission will seek specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

SYNOPSIS

1. *Introduction.* In the *NPRM* the Commission commences a proceeding to consider changes to its rules and procedures for comparatively considering competing applications for new and major modifications to noncommercial educational FM radio stations, FM translator stations, and full power television stations (collectively, NCE or NCE broadcast) and low power FM (LPFM) stations. The Commission seeks comment on proposals to improve selection procedures, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens.

2. The Commission accepts applications for new NCE and LPFM stations, or major changes to authorized NCE and LPFM stations, during specified filing windows announced by public notice. Due to the finite nature of and high demand for spectrum, the Commission cannot authorize an NCE or LPFM station to every qualified applicant. Accordingly, after the close of an NCE or LPFM filing window, the Commission examines all timely and complete applications to determine whether any two or more proposals are mutually exclusive (MX). The Commission currently uses a point system to select among the mutually exclusive applications. The Commission compares MX groups of NCE applications under the point system set forth in 47 CFR 73.7003. The NCE point system awards a maximum of seven merit points, based on four distinct criteria: (1) established local applicant; (2) diversity of ownership; (3) state-wide networks; and (4) technical parameters. The applicant with the highest score in a group is designated a “tentative selectee.” Tied applicants are subject to mandatory time-sharing. The Commission compares mutually exclusive groups of LPFM applications under the point system set forth in 47 CFR 73.872. The LPFM point system awards a maximum of six merit points, based on six criteria. Applicants tied for the highest point total in an MX group are subject to voluntary and involuntary time-sharing.

3. The NCE and LPFM comparative procedures have facilitated the efficient grant of

several thousand new station construction permits. However, certain rules and procedures confused applicants, drew criticism, or delayed the initiation of new service. Some rules appeared counterproductive or imposed undue burdens on applicants; others appeared to omit necessary guidance. The Commission also identified inconsistencies between the rules and the forms. Accordingly, the *NPRM* considers changes to clarify, simplify, and improve the Commission's licensing procedures for new NCE broadcast and LPFM stations.

4. *Eliminate Governing Document Requirements for Established Local Applicants.* Under the Commission's point system selection process, established local applicants are awarded three points. To qualify, an applicant must certify and document that it has been "local" and "established," as defined in 47 CFR 73.7000, continuously for at least two years immediately prior to application filing. Further, 47 CFR 73.7003(b)(1) and the FCC Form 340 certification dictate that to receive the three localism points, all applicants must amend their governing documents to require that localism be maintained (Localism Governing Document Requirement). In contrast, the Worksheets and Instructions to FCC Form 340 limit the rule's applicability, and direct that only applicants relying on governing board residences must amend their governing documents to require that localism be maintained.

5. The documentation requirement discrepancy between the rules and the FCC Form 340 instructions and orders adopting the NCE point system created undue confusion, generated considerable litigation among applicants during the 2007 and 2010 NCE FM filing windows, and delayed the licensing process. The Commission does not propose a change in the requirement to maintain localism for a specified period of time. However, to improve the fair and efficient award of points under the localism criterion, the Commission proposes to eliminate the current 47 CFR 73.7003(b)(1) requirement that governing documents include a localism provision.

6. The Commission seeks comment on the proposed elimination of this specific documentation requirement for all categories of applicants seeking to qualify for localism points. In lieu of the Localism Governing Document Requirement, the Commission proposes to safeguard its localism goals by incorporating into the current Holding Period rule a new provision explicitly requiring any

prevailing applicant that receives localism points during the point system analysis to maintain localism during the period from the grant of the construction permit until the station has achieved four years of on-air operations. Is this, along with a certification pledging to maintain localism at the time of filing the Form 340 application, sufficient to safeguard the “established local applicant” criterion? Are there other means to safeguard this vital criterion? Alternatively, should the Commission retain the Localism Governing Document Requirement solely for the category of applicants relying on their governing board member residences to qualify as local, and accordingly, amend the rules to clarify that only applicants relying on board members’ residences must satisfy the Localism Governing Document Requirement? The Commission invites comment on these proposals, and any other suggestions to clarify, simplify, and safeguard the “established local applicant” criterion.

7. *Eliminate Governing Document Requirements for Applicants Claiming Diversity Points.*

The Commission awards two points for local diversity of ownership if the principal community contour of the applicant’s proposed NCE station does not overlap with those of any other station in which either the applicant or any party to the application holds an attributable interest. To qualify for diversity points under the point selection process, an applicant must certify that: (1) neither it nor any party to the application currently has such an interest; (2) the organization’s governing documents, i.e., its “by-laws, constitution, or their equivalent,” require maintenance of diversity into the future; and (3) it has placed documentation of its diversity qualifications in a local public inspection file and has submitted copies of the documentation to the Commission.

8. To document future diversity, the Commission requires an applicant to file a copy of its pertinent corporate governance documents, showing that it properly amended its governing documents to require the maintenance of such diversity (the Diversity Governing Document Requirement). Applicants, such as state universities that are governed by state charters and statutes, which cannot be amended without legislative action, are permitted to base the governing document component of their diversity certification on alternative safeguards (the Legislative Exception). For such applicants and those without official traditional governing documents, the Commission requires specificity and exactitude in

supporting diversity documentation and explicit mechanisms to clearly communicate the diversity requirements to current and future board members and enforce such requirements.

9. The Commission found that this Diversity Governing Document Requirement has had the unintended effect of confusing applicants, and multiple applicants, otherwise qualified and legitimate, lost diversity points because of ministerial mistakes and the failure to comprehend the requirement to submit documentation to demonstrate a commitment to maintain diversity in the future. The Commission proposes to eliminate both (1) the requirement that applicants amend their governing documents, or provide an alternative safeguard showing, to pledge that “diversity be maintained,” and (2) the requirement to submit such documents to the Commission and place the documentation in the local public inspection file. The Commission invites comments on its proposal to eliminate this documentation requirement for all applicants seeking to qualify for diversity points.

10. In lieu of the Diversity Governing Document Requirement, the Commission proposes to safeguard its diversity goals by incorporating into the current Holding Period rule a new provision prohibiting any prevailing applicant that receives diversity points during the point system analysis from acquiring a radio or full power or Class A television station, which would overlap the principal community contour of its new NCE FM or NCE television station, during the period from the grant of the construction permit until the station has achieved four years of on-air operations. The restriction would apply to the applicant itself, any parties to the application, and any party that acquires an attributable interest in the permittee or licensee during this period. Further, the Commission proposes to add an additional question to FCC Form 340, FCC Form 314, and FCC Form 315, requiring applicants to certify that the proposed acquisition would comply with the subject authorization’s diversity condition. The Commission seeks comment on whether these are effective means to safeguard its diversity goals, and invites comments on any alternative measures to clarify, simplify, and safeguard the diversity of ownership criterion

11. *Establish Uniform Divestiture Pledge Policies.* The Commission has held that, generally, a contingent pledge to divest an attributable broadcast interest or resign from an attributable positional

interest (collectively, the Divestiture Pledge) is an ineffective mechanism to avoid the attribution of broadcast interests that are held at the close of the filing window. Rather, diversity points are only awarded when the applicant completes the pledged action prior to the close of the filing window. The Commission, however, has carved out three exceptions to this general policy and will accept contingent Divestiture Pledges for: (1) non-fill-in translator stations if the applicant pledges to request the cancellation of the translator authorization upon the new NCE FM station's commencement of operations; (2) Class D stations if the applicant commits to divesting the Class D station license prior to the commencement of operations by a same-area full service NCE FM station; and (3) LPFM stations if the applicant/party commits to divesting its interest in the LPFM station license prior to commencement of program tests by the new NCE FM station. During the 2007 and 2010 NCE FM filing windows, the Commission denied requests to utilize contingent Divestiture Pledges to exclude full service stations from the diversity of ownership consideration, and some applicants requested that the Commission revisit and expand the scope of its divestiture policies to recognize full service station Divestiture Pledges for comparative purposes.

12. The Commission has found that the current policy can be unduly burdensome considering that (1) the divestiture may never be required, i.e., the applicant may not become a tentative selectee, and (2) the diversity concerns do not ripen regarding a tentative selectee until after a construction permit is issued and station construction is completed, a process that could take several years from the close of the window. The Commission, therefore, concludes that the public interest would be better served by revising its current policy and crediting all contingent Divestiture Pledges that are submitted in the application by the close of the filing window. The Commission proposes to mandate that the actual divestiture or resignation be completed by the time the new NCE station commences program test operations and invites comment on these proposals.

13. *Expand Tie-Breaker Criteria.* Under the Commission's NCE point system process, applicants tied with the highest number of points awarded in a MX group proceed to a tie-breaker round. The first tie-breaker is the number of radio or television station authorizations attributable to each

applicant. The second tie-breaker is the number of pending same service station applications attributable to each applicant. If the second factor fails to break the tie, the Commission uses mandatory time-sharing as the tie-breaker of last resort for full service NCE stations. During the 2007 and 2010 NCE FM filing windows, hundreds of MX groups resulted in ties following the point system analysis and proceeded to the tie-breaker round. The Commission anticipates more ties in future NCE FM filing windows.

14. The Commission seeks comment on the current tie-breaker system and whether it is the most efficient means of resolving mutual exclusivity among tied NCE applicants. To minimize resorting to the final mandatory time-sharing option, the Commission asks if there are further tie-breaking measures the Commission should use if a tie is not broken after the second tie-breaker. To encourage more voluntary settlements or time-sharing among tied applicants, the Commission asks if it should amend the reimbursement restrictions of 47 CFR 73.3525 to specify that the restrictions do not apply to applicants which remain tied after the second tie-breaker criterion. The Commission invites comments on any proposals for supplemental tie-breakers that will be practical, fair, and effective and/or ways to improve and apply the current tie-breaker process.

15. *Revise Procedures for Allocating Time in NCE Mandatory Time-Sharing Situations.* The Commission established that, in cases where the new point selection process and tie-breakers resulted in more than one remaining MX application, it would impose mandatory time-sharing on the remaining applicants. The Commission, however, did not provide a mechanism for allocating time to each applicant. Rather, in such situations, the Commission directed the Bureau staff to provide the tied applicants 90 days to reach a voluntary time-sharing agreement and advised applicants that, if they were unable to reach a voluntary time-sharing agreement within 90 days, it would designate their applications for hearing solely on the issue of allotting time in accordance with 47 CFR 73.561(b)(2). This current process has resulted in delayed construction of facilities and commencement of service. In contrast, for the LPFM service, the Commission adopted a specific deadline for submitting voluntary time-share agreements, explicit requirements for the voluntary time-share proposals, and a detailed process for allocating time to MX LPFM tentative selectees that are unable to reach a voluntary time-share

agreement. The LPFM process eliminated any need for a hearing and resulted in an expedient resolution of groups of MX LPFM application.

16. The Commission seeks comment on whether to adopt similar mandatory time-share rules and procedures for MX NCE applicants, including a rule to delineate an explicit deadline for submitting voluntary time-share agreements and detailed steps to allocate time to NCE tentative selectees that are unable to arrive at a voluntary time-share agreement within the allotted deadline. Should the Commission codify a 90-day timeframe for submitting voluntary NCE time-share agreements, therefore requiring tied applicants to file any time-share agreements within 90 days of the release of a public notice or order announcing the tie? Is there another process that would provide for the expedient submission of voluntary time-share agreements and the resolution of these ties? In the event of a tie between three or more applicants, should the Commission amend the rules to permit, as it does in the LPFM context, voluntary point aggregation time-share agreements?

17. Should the Commission adopt similar procedures for tied MX NCE applicants, modeled after the current LPFM rules, which have worked effectively to resolve mutual exclusivities and expedite new service to the public? Specifically, in the LPFM context, if a tie among MX applicants is not resolved through voluntary time-sharing, under the involuntary time-sharing rules, tied, grantable applications are eligible for concurrent, non-renewable license terms. Moreover, under the LPFM involuntary time-sharing rules, tied, MX groups are limited to three applicants. Should the Commission adopt a similar process for the NCE broadcast service and limit the number of mandatory time-share applicants to three? For LPFM, if there are more than three tied and grantable applications, the Commission dismisses all but the applications of the three applicants that have been local for the longest uninterrupted periods of time. To effectuate this process, the Commission requires each applicant to provide, as part of its initial application, its date of establishment. If the Commission imposes a limit on the number of mandatory NCE time-share applicants, would a similar cut-off mechanism work for the NCE service, where, unlike LPFM, many of the applicants are long-established universities and governmental entities? If the Commission uses the date of establishment as the cut-off mechanism, and

an applicant subsequently assigns or transfers the NCE authorization received pursuant to these new procedures, should the Commission require the date the new assignee or transferee was “locally established” to be the same as, or earlier than, the date of the most recently established local applicant in the tied MX group? In lieu of the date of establishment, is there an alternative cut-off mechanism that would be more effective for the NCE service?

18. In the LPFM service, when there are three remaining tied applicants, the Commission assigns each applicant one of the following time slots: 2 a.m.-9:59 a.m., 10 a.m.-5:59 p.m., and 6 p.m.-1:59 a.m. If there are only two applicants, the Commission assigns each one of the following time slots: 3 a.m.-2:59 p.m., or 3 p.m.-2:59 a.m. The staff allows the LPFM applicants to confidentially select their preferred time slots, giving preference to the applicant that has been local for the longest uninterrupted period of time. Finally, to ensure that there is no gamesmanship, the Commission requires the applicants to certify that they have not colluded with any other applicants in the selection of time slots. Should the Commission adopt the same time slots and selection procedures for the NCE service, or are there alternatives that would be more appropriate and effective for the NCE service? The Commission seeks comment on these proposals and invites suggestions for any alternative plans or variations on these plans, including an analysis of the pros and cons in promoting its goals of expediting new service to the public and expanding the diversity of voices available to radio audiences.

19. *Clarify and Modify the “Holding Period” Rule.* The Commission adopted 47 CFR 73.7005 (the Holding Period Rule) to ensure that applicants selected through the NCE comparative process maintain the characteristics that formed the basis of their selection for a period of four years of on-air operations and that the public receives the benefit of the best proposal. The Holding Period Rule currently contains two separate components. The “Technical” component of the rule dictates that any NCE FM applicant receiving a decisive Section 307(b) preference must “construct and operate technical facilities substantially as proposed, and cannot downgrade service to the area on which the preference is based” during the four-year holding period. Second, the “Assignments/Transfers” component of the Holding Period Rule states that NCE stations awarded by use of the point system are “subject to a holding

period.”

20. The Commission proposes both stylistic and substantive changes to the Holding Period Rule to clarify and promote its laudable goal of ensuring that the point selection process is meaningful by mandating that applicants maintain comparative characteristics for a minimum period. As an initial matter, the Commission proposes to rename 47 CFR 73.7005 “Maintenance of Comparative Qualifications.” Second, the Commission proposes to add a new provision to 47 CFR 73.7005 to establish, for the first time, specific timing requirements for maintaining comparative qualifications. Specifically, the Commission proposes that NCE permittees and licensees issued authorizations under comparative procedures maintain their comparative qualifications from the grant of the construction permit until the station has achieved at least four years of on-air operations. The Commission invites comments on this proposal and asks if this proposed maintenance period is sufficient to establish meaningful service for the community, and deter license speculators, without unduly burdening the licensee? If commenters believe a different period is warranted, how long should it be? If the Commission adopts a different maintenance period than grant of the construction permit until four years of on-air operations, should the Commission make a conforming change to the holding period in the Assignments/Transfers component of the rule?

21. Third, the Commission proposes to relax 47 CFR 73.7005(b) and the parallel provision in 47 CFR 73.7002(c) (Fair distribution of service on reserved band FM channels) to eliminate the current absolute bar on any preference-related service downgrade. Specifically, the Commission proposes to allow minor modifications, provided that any potential loss of first and/or second NCE FM service is offset by first and, separately, combined first and/or second NCE FM service population gain(s). This change is intended to give permittees and licensees reasonable flexibility to implement facility modifications while also preserving the core purpose of these rules: to sharply limit service losses to areas in which the NCE FM station is providing Section 307(b)-preferred service. The Commission seeks comment on this proposal.

22. The Commission also seeks comment generally on methods to promote compliance with

47 CFR 73.7005 and appropriate sanctions for licensees that fail to comply and fulfill their comparative commitments. For example, should stations that fail to maintain their comparative qualifications be subject to mandatory time-share proposals as part of the license renewal process, or should the Commission refuse to renew the licenses of stations that fail to maintain their comparative qualifications for the required period of time? The Commission invites comments on each of these proposals and any alternative suggestions to clarify 47 CFR 73.7005.

23. *Prohibit Amendments to Cure Section 301 Violations by Application Parties.* Section 632(a)(1)(B) of the subsequently enacted Making Appropriations for the Government of the District of Columbia for Fiscal Year 2001 Act “prohibit[s] any applicant from obtaining a low power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934.” The Commission’s rules, 47 CFR 73.854, and FCC Form 318 implement this mandate by requiring an LPFM applicant to certify under penalty of perjury that neither the applicant nor any party to the application has engaged in any manner in unlicensed operation of any station in violation of Section 301 of the Act. Any application that lacks such a certification, or any application that falsely makes such a certification, is dismissed. The Bureau has held that an LPFM applicant dismissed pursuant to the Appropriations Act and 47 CFR 73.854 may not regain its eligibility to hold an LPFM authorization by removing the board member associated with unauthorized broadcasting. The Commission itself, however, has never addressed the issue. There is no explicit rule precluding an LPFM applicant dismissed for violations of the Appropriations Act and 47 CFR 73.854 from seeking nunc pro tunc reinstatement by amending its application to remove any board members that have engaged in unauthorized broadcasting.

24. The Commission proposes to codify Bureau precedent and amend its rules to preclude an LPFM applicant dismissed pursuant to the Appropriations Act and 47 CFR 73.854 from seeking nunc pro tunc reinstatement of its application and to disallow any change in directors as a means of resolving the applicant’s basic qualifications under 47 CFR 73.854. The corrective amendment issue typically arises in cases where the LPFM applicant falsely certifies “Yes” to Question 8 even though one or more of the

parties to the application has engaged in unauthorized broadcasting. This could be because the person submitting the application knowingly submitted a false certification, did not do sufficient due diligence about the parties to the application, or conducted some due diligence, but received false information from parties to the application. The Commission believes that a restriction on corrective amendments to resolve basic qualification issues under 47 CFR 73.854 would be in keeping with the intent of the Appropriations Act and reflect the seriousness with which the Commission treats unauthorized broadcasting. The Commission invites comment on this proposal.

25. *Permit Time-Sharing Agreements Prior to Tentative Selectee Designations.* When the LPFM point analysis results in a tie, the Commission first employs voluntary time-sharing as the initial tie-breaker. The point aggregation rule permits tied tentative selectees to jointly submit a time-sharing agreement. A new aggregated point total is then assigned to the group. The group with the highest number of aggregated points prevails. There has been some confusion as to whether LPFM applicants can communicate and collaborate with each other, either pre- or post-application filing, with the goal of potentially aggregating points.

26. The Commission tentatively concludes that 47 CFR 73.872(c) should be modified to specifically permit point aggregation discussions and agreements at any point before the Bureau implements the involuntary time-share procedures, including prior to tentative selectee designations, if any such agreement is conditioned on each of the parties subsequently achieving tentative selectee status. Currently, there is no rule that prohibits LPFM applicants from each filing a separate LPFM application with the intended goal of arriving at a time-sharing agreement, if the agreement is conditioned on each applicant becoming a tentative selectee. The Commission believes organizations interested in filing an LPFM application should have leeway to communicate with other eligible organizations about maximizing their chances to acquire LPFM construction permits and to explore potential time-share construction and operating efficiencies. The Commission believe this type of cooperation can help ensure increased service to the public. The Commission seeks comment on this proposed new rule and on what, if any, safeguards are needed.

27. The Commission believes the potential for gamesmanship is limited. Any collaboration among applicants prior to the Commission's identification of the tentative selectees is an inherently tentative process. The identity of competing applicants is only determined after the close of the filing window. Claimed points may be rejected by the Commission or challenged by other applicants in the MX group. The proposed rule would negate agreements between tentative selectees and non-tentative selectees. Further, the Commission believes the potential for gamesmanship is limited because each party to the prevailing time-share agreement is required to operate and manage its respective proposed station if its application is granted. Nonetheless, should the Commission consider limiting the number of organizations that can enter into a time-share agreement, so that applicants cannot "stack the deck" in their favor?

28. In light of the Commission's proposed rule explicitly allowing applicants to communicate and collaborate on time sharing arrangements, should the Commission reconsider the current process for reapportioning time following the surrender or expiration of a construction permit or license of a time-share party? The Commission solicits comments on ways to reduce the potential for abuse of the air-time reapportionment policy. As proposed previously, should the Commission open a "mini-window" for the filing of applications for the abandoned air-time? Should the Commission limit the period during which reapportionment policies would apply, e.g., the first four years of on-air operations? Should the Commission limit eligibility to unsuccessful applicants from the same MX group in the initial window? Are there other procedures or policies the Commission should adopt to deter abuses and promote the fair and efficient use of air time following the cancellation of a time-share authorization?

29. *Establish Procedures for Remaining Tentative Selectees Following Dismissal of Accepted Point Aggregation Time Share Agreements.* Under the Commission's rules, an accepted point-aggregation time-share amendment/agreement may subsequently be found to be invalid due to a basic or comparative qualifications defect in the application of a time-share party, or as a result of changed circumstances. The current rules do not establish procedures for the further processing of the remaining tentative selectees in an affected MX group.

30. The Commission proposes to codify a procedure under which the Bureau would resume the processing of the remaining tentative selectees following the dismissal of a tentatively accepted time-share agreement. Following such dismissal, the Bureau would release a public notice that would initiate a second 90-day period, affording all remaining tentative selectees within the affected MX group a further opportunity to enter into either a universal settlement or a voluntary point-aggregating time-share arrangement in accordance with 47 CFR 73.872(c) and (e). Under this proposal, the Bureau would dismiss all pending point aggregation amendments/agreements when it releases the public notice commencing the new settlement period. The Commission believes that these proposed procedural changes would be fair to all applicants while also promoting core LPFM service goals. The Commission invites comment on this proposal, as well as on other approaches to address this issue in an efficient manner.

31. *Reclassify Gradual Board Changes as Minor.* Under the Commission's current rules, changes in the composition of the governing board of an NCE or LPFM applicant can lead to the dismissal of the pending application. Applicants can make "minor" changes to their application at any time, but a "major" change outside of a filing window will result in dismissal. An ownership change is considered "major" unless at least one of the original parties to the application retains an ownership interest exceeding 50 percent. Many NCE and LPFM applicants are nonstock or membership organizations. Under the Commission's rules, members of the governing board of such entities are generally treated as "owners" and, therefore, are listed as parties to the original application.

32. To address this problem for applicants, the Commission has routinely granted waivers for gradual (although not sudden) majority board changes occurring while a new station application is pending. In making such determinations, the Commission has generally looked at the overall pattern of change in ownership and not at the motivations or specific circumstances surrounding the removal of individual board members. On the other hand, the Commission has taken seriously real-party-in-interest ("takeover") issues involving outside entities, especially if the applicant's board change occurs suddenly.

33. The Commission tentatively concludes that it should amend 47 CFR 73.871, 73.3572,

and 73.3573 to classify as a “minor” change in ownership board changes in nonstock and membership NCE and LPFM applicants which occur gradually over time and have little or no effect on such organization’s mission, even when they result in a change in the majority of such organization’s governing board. This proposal would allow those applicants to implement gradual board changes outside a filing window without disqualifying their pending applications. The current system of waivers regarding NCE and LPFM board changes, by its nature, requires staff to analyze the specific circumstances of each subject board change. In practice, this non-standardized approach has led to uncertainty for NCE and LPFM applicants undergoing board changes as a regular or natural part of their organizational function. The Commission also proposes to treat all ownership changes in a governmental applicant as minor, provided that the change has little or no effect on such applicant’s mission.

34. Notwithstanding the Commission’s view that gradual changes in boards will not impact the nature of an NCE or LPFM applicant, the Commission remains concerned that sudden board changes are more indicative of gamesmanship and inconsistent with its processing system. Therefore, the Commission propose to continue to treat sudden majority board changes for full service NCE and LPFM applicants as major changes. The Commission seeks comment on these proposals. The Commission also seeks comment on the appropriate definitions of “gradual” and “sudden” in this context. Finally, the Commission requests comment on the costs and benefits of the proposed rule changes and, alternatively, on retaining the current major change rule for such entities and continuing to consider 47 CFR 73.3572, 73.3573, and 73.871 waiver requests on a case-by-case basis.

35. Commenters supporting the proposed rule change should also address the circumstances, if any, in which even a gradual ownership change (or series of changes) may constitute a break in continuity of control and therefore still be treated as a major ownership change for application purposes. If there are gradual changes that should be treated as a major ownership change, to what extent, if any, should the Commission retain or codify elements of its existing waiver policy? For example, should the Commission attempt to assess whether board changes are “routine” or “non-routine,” and if so, under what standard? Would relevant factors to such an analysis include whether the change occurred pursuant

to an annual or special election, revealed hostile or amicable relationships among members of the board, or were part of an effort to address wrongdoing on the part of a board member? Should the Commission assess as part of this analysis whether board changes were taken in accordance with an organization's bylaws and applicable state law? Should the Commission consider whether a board change represented an attempt to gain control of an NCE or LPFM board by an outside entity? Could this concern be adequately addressed by the Commission's real-party-in-interest policies and precedents? Should the Commission take steps to prevent in-house "factions" or members with opposing views from attempting to "gain control" of the applicant? If so, how can the Commission meaningfully distinguish legitimate elections from illicit attempts to "gain control"? For pending applications, what amendment information, if any, should the Commission require from applicants to demonstrate that a board change should be treated as minor? Would a certification be enough? Should the Commission require exhibits or documents that can be verified by competing applicants and, if so, what information should be included?

36. Finally, the Commission seeks comment on how its ownership proposal might alter, either positively or negatively, the potential for gamesmanship and unfair advantage in the comparative consideration process. When the Commission first proposed to award points to NCE applicants with local governing boards, commenters were concerned that applicants might feign local qualifications by "renting" local citizens or using "strawmen" local incorporators to be replaced with non-local parties after grant. Are there similar concerns about substitution of board members for pending NCE and LPFM applications? To the extent that the Commission is proposing allowing modifications to pending applications in a comparative consideration process, and thus potentially affecting an applicant's position in the ranking queue, it seeks comment on whether existing safeguards adequately address such concerns.

37. *LPFM-specific transferability issues for permittees and licensees.* The Commission proposes to clarify how board changes impact LPFM licensees and permittees in 47 CFR 73.865. Although 47 CFR 73.865(e) permits sudden changes in control of LPFM boards, the current language of 47 CFR 73.865(d) prohibits the "assignment or transfer of an LPFM construction permit at any time," with no reference to an exception for either sudden or gradual majority board changes. Similarly, the

language of 47 CFR 73.865(c) states that an LPFM licensee may not engage in a transfer or assignment during the three-year holding period from the date of issuance of the license. Neither rule cross-references 47 CFR 73.865(e). For these reasons, the Commission is concerned that the intended relief regarding sudden board changes for LPFM entities has not been fully realized since 47 CFR 73.865(e) was adopted. Therefore, the Commission proposes to clarify that 47 CFR 73.865(e) applies to LPFM permittees and licensees at all times, including during any relevant permit or license holding period. To do so, the Commission proposes to modify the language of 47 CFR 73.865(e) to state that it applies “notwithstanding” the other provisions of 47 CFR 73.865 provided the requirements in 47 CFR 73.865(a) are satisfied and the entity’s mission remains the same. The Commission also proposes to clarify that LPFM permittees and licensees that are required under 47 CFR 73.865(e) to file an FCC Form 316 in response to a sudden change in the majority of the governing board must file such form within 30 days of the final event that caused the LPFM permittee or licensee to exceed the 50 percent threshold. The Commission seeks comment on these proposals.

38. *Clarify Reasonable Site Assurance Requirements.* When an NCE or LPFM applicant files its initial application, it must have reasonable assurance that its specified site will be available for the construction and operation of its proposed facilities. Despite the fact that reasonable assurance of the applicant’s proposed site is a prerequisite to filing an application, NCE and LPFM station applicants have never been required to certify the availability of proposed transmitter sites in the FCC Form 340 or Form 318 application. Further, the Instructions to the FCC Form 318 and FCC Form 340 do not explain the Commission’s site availability requirements or remind applicants that reasonable site assurance is a prerequisite to application filing. Accordingly, some LPFM and NCE applicants were under the false assumption that reasonable site assurance was not required. Applicants routinely and successfully filed petitions to deny against competing applicants for lack of site assurance.

39. The Commission tentatively concludes that certain application form and instruction changes for NCE and LPFM applicants are necessary to promote compliance with the reasonable site assurance requirement and the efficient processing of applications. The Commission proposes to amend

the FCC Form 340 and Form 318 to require an applicant to certify that it has obtained reasonable assurance from the tower owner, its agent, or authorized representative that the specified site will be available. The Commission also proposes to update the FCC Form 340 and 318 Instructions to explain the requirement of obtaining reasonable site availability prior to the application filing. Further, the Commission proposes to require NCE and LPFM applicants to retain and submit to the Commission, upon request, information and material documentation to establish the basis on which reasonable assurance has been obtained, including, for example, the name and telephone number of the person contacted, and whether the contact is a tower owner, agent, or authorized representative. Alternatively, should this substantiating information be required as part of the FCC Form 340 or Form 318 filing? Would the requirement to provide such detailed information create an unnecessary burden on applicants, or prove useful in expediting the processing of applications? Is the requirement necessary in light of the difference between these processes and the financial incentives associated with applications subject to auction bidding and payment procedures? The Commission seeks comments on these proposals and invites comments on other methods to minimize frivolous applications and deter site availability challenges.

40. *Streamline Tolling Procedures and Notification Requirements.* Broadcast construction permits terminate and, thus, are forfeited, if the permittee does not complete construction and file a covering license application prior to expiration. The Commission will, however, “toll” the broadcast construction period, i.e., temporarily stop the “construction clock,” upon prompt notification that an original construction permit is encumbered by one of five circumstances beyond the permittee’s control, including, among others, administrative or judicial review of the permit grant. Tolling begins on the date of the encumbrance, provided that the permittee promptly notifies the Commission, usually by a simple letter, within 30 days of the tolling event. Tolling treatment is not automatic but, rather, notification-based. Thus, absent a permittee notification, the construction period will continue to run. The notification requirement applies even when the permit is encumbered by circumstances involving the Commission itself, such as when a petition for reconsideration of the grant of a permit is pending, or

when a new station permit condition ties program test authority to the initiation of program tests by a second affected station.

41. The Commission proposes to modify its tolling procedures for NCE and LPFM permittees, including the current tolling notification requirements for these services. The Commission recognizes that NCE and LPFM permittees often fail to notify the Commission within 30 days of a tolling event because they are inexperienced with tolling procedures or are attempting to complete the licensing process without legal counsel. Such permittees may lose substantial construction time or forfeit their authorizations altogether despite a willingness to construct once encumbrances beyond their control are resolved.

42. The Commission proposes to identify and place into a tolling posture any original NCE or LPFM construction permit: (1) that includes a condition on the commencement of operations and the Commission has a direct licensing role in the satisfaction of this condition; or (2) that is subject to administrative or judicial review of the permit grant. In such situations, the staff would add appropriate tolling codes to the broadcast database. The Commission tentatively concludes that permits tolled by staff under these revised procedures should not be subject to the six-month update requirement. The Commission also would be responsible for ending tolling treatment upon the resolution of the pertinent encumbrance, again limited to NCE and LPFM permittees. Further, the Commission believes that its proposal would be manageable with existing agency resources because it is limited to aiding NCE and LPFM stations, services which have more commonly encountered challenges with the current tolling procedures. The Commission seek comment on these proposed changes.

43. *Lengthen LPFM Construction Period.* The Commission established an eighteen-month construction period for LPFM permittees based on the belief that LPFM permittees would be able to construct their stations in a shorter period of time than permittees of full power FM stations, which are afforded three years (36 months) to build. The Commission also subsequently adopted a proposal to allow LPFM permittees to request one 18-month extension to complete construction of their facilities upon a showing of good cause. This is codified in 47 CFR 73.3598(a).

44. The Commission proposes to lengthen the construction period for LPFM permittees to a full three years. It proposes to apply the extended construction period to both existing LPFM permits, which have not yet expired as of the effective date of the new rule, if adopted, and prospectively to new permits granted after the proposed new rule takes effect. In comments filed in the *Modernization of Media Regulation Initiative* docket, REC Networks (REC) noted that 48 percent of applicants issued permits following the 2013 LPFM filing window have requested an 18-month extension and that many LPFM permittees face construction challenges similar to those of full service FM permittees. The Commission agrees that LPFM permittees have encountered more challenges than initially anticipated and have often been unable to construct within 18 months. As REC notes, stations operating pursuant to second adjacent channel waivers, made possible by the Local Community Radio Act of 2011 (LCRA), can be more technically complex to build. Additionally, the Commission has found that many permittees have requested construction extensions in order to raise additional funds and deal with local zoning and siting complications. LPFM applicants, who are often inexperienced with the intricacies of broadcasting, can be ill-prepared to handle such challenges in an 18-month period. Accordingly, the Commission seeks comment on this proposal to lengthen the LPFM construction period and asks if amending the rules to provide LPFM permittees a full three-year construction period would provide relief to LPFM permittees struggling to complete construction of their stations and eliminate the administrative burdens associated with filing waiver requests?

45. *Modify Restrictions on the Transfer and Assignment of LPFM Authorizations.* When the Commission established the LPFM service, it initially prohibited the transfer and assignment of LPFM authorizations. The Commission subsequently allowed the assignment and transfer of LPFM licenses, subject to the conditions that: (1) licenses could not be sold for consideration exceeding the depreciated fair market value of the physical equipment and facilities of the station; (2) assignees and transferees must satisfy all eligibility criteria at the time they applied for the LPFM license; and (3) licenses were subject to a three-year holding period during which they could not be assigned or transferred.

46. In comments filed in the *Modernization of Media Regulation Initiative*, REC argues that

the three-year holding period for LPFM licenses and the prohibition on the assignment and transfer of LPFM permits should be eliminated. REC notes that several applicants awarded construction permits following the 2013 LPFM window were unable to construct and attempted to assign their permits to prevent expiration, but were unable to do so because of the 47 CFR 73.865(d) restriction. As a safeguard, REC proposes that an 18-month holding period apply to the assignment and transfer of original construction permits. Following 18 months from the issuance of the original construction permit, REC proposes that LPFM permittees be allowed to assign or transfer the permit to a party that, in cases where the permittee obtained the permit through the comparative points process, meets or exceeds the assignor's point total. Finally, to promote continuation of service where a licensee is no longer willing or able to operate the station, REC proposes to eliminate the three-year holding period on assigning and transferring LPFM licenses.

47. The Commission tentatively concludes that it should eliminate both the absolute prohibition on the assignment and transfer of LPFM construction permits and the three-year holding period for LPFM licenses. Specifically, the Commission proposes to permit parties to assign or transfer LPFM permits and station licenses, provided that the following safeguards are satisfied: (1) the assignment or transfer does not occur prior to 18 months from the date of issue of the initial construction permit; (2) consideration promised or received does not exceed the legitimate and prudent expenses of the assignor or transferor; (3) the assignee or transferee satisfies all eligibility criteria that apply to a LPFM license; and (4) for a period of time commencing with the grant of any permit awarded on the basis of the comparative point system provisions of 47 CFR 73.872, and continuing until the station has achieved at least four years of on air operations, (a) the assignee or transferee must meet or exceed those points awarded to the LPFM tentative selectee, and (b) for LPFM stations selected in accordance with the involuntary time-sharing provisions of 47 CFR 73.872(d), the date the assignee or transferee was "locally established" must be the same as or earlier than the date of the most recently established local applicant in the tied MX group.

48. The Commission invites comments on these proposed changes and safeguards and asks if

eliminating the three-year holding period for LPFM licenses would make these stations more viable and prevent the loss of LPFM service? Conversely, would such changes create opportunities for gamesmanship? If so, what additional safeguards would be effective to ensure that the LPFM service retains its noncommercial, non-profit, hyperlocal character and deter speculation in LPFM authorizations?

PROCEDURAL MATTERS

49. **Initial Regulatory Flexibility Analysis.** As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 89. The Commission will send a copy of this entire *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the Federal Register.

50. **Need for, and Objectives of, the Proposed Rule Changes.** The Commission initiates this rulemaking proceeding to obtain comments concerning certain proposals designed to clarify and simplify the point systems used to evaluate competing applications for noncommercial educational (NCE) broadcast stations (full-service FM, full power television, and FM translator) and low power FM (LPFM) broadcast stations, and related NCE and LPFM rules. Specifically, the Commission seeks comment on the following: (1) whether to eliminate the current requirement that NCE applicants amend their governing documents to pledge that localism/diversity be maintained in order to receive points as “established local applicants” and for “diversity of ownership,”; (2) whether to award points based on contingent pledges to divest interests in existing full-service stations if the divestiture is not yet implemented by close of the application filing window; (3) whether to alter tie-breaker criteria to reduce the need for mandatory time-sharing and/or to adopt procedures that would minimize some of the drawbacks of mandatory time-sharing; (4) whether to clarify aspects of the “holding period” by which NCE permittees maintain the characteristics for which they received comparative preferences and to

specify consequences for non-compliance; (5) whether to codify the rules to prohibit LPFM applicants from filing corrective amendments to resolve basic qualification issues under 47 CFR 73.854; (6) whether to codify the permissibility of LPFM applicants to discuss their intent to aggregate points and time-share prior to the filing of LPFM applications; (7) whether to establish a process for LPFM point aggregation time-share agreements that have been accepted, but later deemed invalid; (8) whether, for LPFM and NCE applicants, to reclassify as “minor” all changes to governmental applicants and gradual board changes in nonstock and membership applicants; (9) whether to modify the NCE and LPFM application forms to clarify the existing requirement for applicants to obtain reasonable assurance of site availability; (10) whether to toll NCE and LPFM broadcast construction deadlines without notification from the permittee, based on certain pleadings pending before, or actions taken by, the agency; (11) whether to revise the LPFM construction period from 18 months to 3 years; (12) whether to allow assignment and transfer of LPFM construction permits after an 18-month holding period; and (13) whether to eliminate the three-year holding period for the assignment and transfer of LPFM licenses. Additionally, the Commission seeks comment on any additional proposals designed to reduce burdens upon NCE and LPFM broadcasters, or to enhance NCE and LPFM service to the public. The Commission’s objectives are to clarify comparative requirements, minimize confusion among applicants, deter speculative applications, and initiate service to the public quickly and efficiently.

51. **Legal Basis.** The authority for this proposed rulemaking is contained in Sections 1, 2, 4(i), 301, 303, 307, 316, and 403 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 301, 303, 307, 316, and 403.

52. **Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.** The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term “small entity” as encompassing the terms “small business,” “small organization,” and “small governmental entity.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The proposed rules will apply to applicants, permittees, and licensees within the LPFM service, NCE full power television service, and to radio stations licensed to operate on channels reserved as “noncommercial educational,” either within the reserved band of the FM spectrum or designated solely for noncommercial educational FM use in a particular area through the Commission’s allocations process. Most affected entities will be applicants for which a “point system” process is used to compare their qualifications with those of competing applicants. However, the proposals concerning minor changes to pending applications, reasonable site assurance, and tolling of broadcast construction deadlines will also affect applications granted outside of the comparative process, such as those that are “singletons” or resolved by settlement among originally conflicting parties.

53. NCE FM Radio Stations. The proposed policies could apply to NCE FM radio broadcast licensees, and potential licensees of NCE FM radio service. The SBA defines a radio broadcast station as a small business if such station has no more than \$38.5 million in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. Radio stations that the Commission would consider commercial, as well as those it would consider NCE stations, are included in this industry. With respect to current licensees, a Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database reflects that as of June 8, 2017, all 4,404 (100 percent) of radio stations operating as noncommercial have revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. Of these, no more than 4,112 authorized stations are potentially affected by the proposals because they are licensed as NCE stations, whereas BIA data also includes stations that are not licensed as NCE stations but choose to operate with a noncommercial format. The estimate may overstate the number of potentially affected licensees because it includes stations that would not be affected by the proposals, including those that have been authorized by methods other than a point system, already met construction deadlines, and/or are no longer subject to a holding period. The estimate may also overstate the number of small entities because in assessing

whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate considers each station separately and does not include or aggregate revenues from affiliated organizations or from commonly controlled stations.

54. The proposals will primarily impact potential licensees. The Commission accepts applications for new NCE FM radio broadcast stations in filing windows. There are no pending applications remaining from previous NCE FM filing windows. The Commission anticipates that in future filing windows it will receive a number of applications similar to past filing windows and that all such applicants will qualify as small entities. The last filing window for reserved band FM spectrum occurred in 2007 and generated approximately 3,600 applications of which approximately 2,700 were mutually exclusive. The last filing window for channels reserved for NCE use through the allotment process was held in 2010, and generated 323 applications, virtually all of which were mutually exclusive. This estimate may overstate the number of potentially affected applicants because filing windows typically include some proposals that need not be resolved by a point system, such as those resolved through settlement agreements.

55. An additional element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and its estimates of small businesses to which they apply may be over-inclusive to this extent.

56. FM Translator Stations and Low Power FM Stations. The proposed policies could affect licensees of FM translator stations and LPFM stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations.

The SBA defines a radio broadcast station as a small business if such station has no more than \$38.5 million in annual receipts. Given the nature of NCE FM translators and LPFM stations, the Commission will presume that all such licensees qualify as small entities under the SBA definition. Currently, there are approximately 1,924 licensed LPFM stations. There are 7,453 licensed FM translator and booster stations, but the booster stations and commercial translators included in this number will not be affected by the proposals. In addition, there are approximately four pending mutually exclusive noncommercial applications filed in the 2003 FM translator filing window and 11 pending applications filed in the 2013 LPFM filing window. The proposal would primarily affect applicants in future FM translator and LPFM windows. The Commission anticipates that in future filing windows it will receive a number of applications similar to past filing windows and that all applicants will qualify as small entities. The last LPFM filing window in 2013 generated approximately 2,827 applications. The 2003 FM translator filing window generated approximately several hundred applications from NCE applicants, of which approximately 69 were mutually exclusive.

57. *NCE Television Stations.* This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.” These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: those having \$38.5 million or less in annual receipts. The 2012 economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than \$25 million per year. Based on that Census data, the Commission concludes that a majority of firms that operate television stations are small. Specifically, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390. These stations are non-profit, and therefore considered to be small entities. The Commission therefore estimates that the majority of

noncommercial television broadcasters are small entities.

58. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by its action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

59. **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.** The proposed rule and procedural changes may, in some cases, impose different reporting requirements on potential NCE full service stations, NCE FM Translators, and LPFM licensees and permittees. The *NPRM* proposes a new submission of information verifying that the applicant obtained reasonable assurance of site availability. Any additional burden would be minimal, however, because the underlying requirement to obtain such assurance currently exists and would not change. Likewise, NCE applicants seeking points as "established local applicants" or for "diversity of ownership" would provide information that is different from that currently required. The Commission believes that the new information would be simpler for applicants to produce because applicants would no longer be required to amend their governing documents. Elimination of certain tolling notification requirements could decrease burdens on applicants that experience encumbrances preventing construction. An NCE or LPFM permittee could receive additional construction time for which it qualifies without initiating a process to notify the Commission of actions taken by or pending within the Commission. If the Commission revises the LPFM construction period to three years, LPFM permittees needing more than the current 18-month construction period would no longer need to file and justify requests for an 18-month extension. Finally, if the Commission were to adopt its proposals to clarify and/or modify

application requirements that applicants have found confusing, this would reduce burdens on such applicants to file and/or respond to petitions challenging point claims.

60. **Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered.** The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

61. In the *NPRM*, the Commission seeks to assist NCE full service broadcast stations, NCE FM Translator, and LPFM broadcast applicants by clarifying and simplifying requirements for claiming and maintaining qualities that are used to compare competing applications. The proposals, if adopted, would enable such applicants: (1) to claim comparative points without the burdensome process of amending their governing documents; (2) to maintain existing full-service broadcast operations by making contingent pledges that do not require divestment of existing interests prior to application grant; and (3) to make certain changes to their governing boards without facing dismissal. The proposals would also: (1) alter tie-breaker criteria to reduce the need for the currently unpopular use of mandatory time-sharing; (2) eliminate the “holding period” for LPFM licenses, clarify the NCE “holding period” rule, and increase flexibility of applicants receiving comparative preferences to satisfy the “maintenance of comparative qualifications” requirements; (3) clarify that LPFM applicants cannot cure prior unauthorized “pirate” operations by removing the alleged pirates from their boards; (4) reduce challenges based on reasonable assurance of site availability; (5) toll NCE and LPFM broadcast construction deadlines without notification about certain matters known to the agency; (6) provide at the outset a longer construction period for LPFM stations; and (7) permit the assignment and transfer of LPFM permits after 18 months. The Commission seeks comment as to whether its goals of providing new NCE

and LPFM service to the public, limiting speculation, and clarifying requirements could effectively be accomplished through these means. The Commission is open to consideration of alternatives to the proposals under consideration, as set forth herein, including but not limited to alternatives that will minimize the burden on NCE and LPFM broadcasters, virtually all of whom are small businesses. There may be unique circumstances these entities may face, and the Commission will consider appropriate action for small broadcasters when preparing a Report and Order in this matter.

62. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule.

None.

PAPERWORK REDUCTION ACT

63. The *NPRM* contains proposed new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements proposed in the *NPRM*, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA), Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Ex Parte Rules

64. *Permit But Disclose.* The proceeding this *NPRM* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the

proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Procedures

65. Pursuant to §§ 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/ecfs/>.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/ecfs/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325,

Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

ORDERING CLAUSES

66. IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 301, 303, 307, 316, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 303, 307, 316, and 403, this Notice of Proposed Rule Making IS ADOPTED.

67. IT IS FURTHER ORDERED that the Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Katura Jackson,
*Federal Register Liaison Officer,
Office of the Secretary.*

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission propose to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Section 73.854 is revised to read as follows:

§ 73.854 Unlicensed radio operations.

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, that neither the applicant, nor any party to the application, has engaged in any manner, including individually or with persons, groups, organizations or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301. If an application is dismissed pursuant to this section, the applicant is precluded from seeking *nunc pro tunc* reinstatement of the application and/or changing its directors to resolve the basic qualification issues.

3. Section 73.865 is amended by revising paragraph (a) introductory text, paragraphs (a)(1) and (2), adding new paragraph (a)(3), revising paragraphs (b) and (c), removing paragraph (d), redesignating paragraph (e) as paragraph (d), and revising the newly redesignated paragraph (d) to read as follows:

§ 73.865 Assignment and transfer of LPFM permits and licenses.

(a) *Assignment/Transfer*: No party may assign or transfer an LPFM permit or license if:

- (1) Consideration promised or received exceeds the legitimate and prudent expenses of the assignor or transferor. For purposes of this section, legitimate and prudent expenses are those expenses reasonably incurred by the assignor or transferor in obtaining and constructing the station (e.g., expenses in preparing an application, in obtaining and installing broadcast equipment to be assigned or transferred, etc.). Costs incurred in operating the station are not recoverable (e.g. rent, salaries, utilities, music licensing fees, etc.) Legitimate and prudent expenses will also include the depreciated fair market value of the physical equipment and facilities of the station;

(2) The assignee or transferee is incapable of satisfying all eligibility criteria that apply to a LPFM licensee; or

(3) For a period of time commencing with the grant of any construction permit awarded based on the comparative point system, § 73.872, and continuing until the station has achieved at least four years of on air operations,

(i) The assignee or transferee cannot meet or exceed the points awarded to the initial applicant; or

(ii) Where the original LPFM construction permit was issued based on a point system tie-breaker, the assignee or transferee does not have a “locally established date,” as defined in § 73.853(b), that is the same as, or earlier than, the date of the most recently established local applicant in the tied MX group. Any successive applicants proposing to assign or transfer the construction permit or license prior to the end of the aforementioned period will be required to make the same demonstrations. This restriction does not apply to construction permits that are awarded to non-mutually exclusive applicants or through settlement.

(b) A change in the name of an LPFM permittee or licensee where no change in ownership or control is involved may be accomplished by written notification by the permittee or licensee to the Commission.

(c) *Holding period:* A construction permit cannot be assigned or transferred for 18 months from the date of issue.

(d) Notwithstanding the other provisions in § 73.865, transfers of control involving a sudden or gradual change of more than 50 percent of an LPFM's governing board are not prohibited, provided that the mission of the entity remains the same and the requirements of § 73.865(a) are satisfied. Sudden majority board changes shall be submitted as a *pro forma* ownership change within 30 days of the change or final event that caused the LPFM permittee or licensee to exceed the 50 percent threshold.

4. Section 73.871 is amended by revising paragraph (c) introductory text and paragraph (c)(3) to read as follows:

§ 73.871 Amendment of LPFM broadcast station applications.

* * * * *

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window. Subject to the provisions of this section, such amendments may be filed as a matter of right by the date specified in the FCC's Public Notice announcing the acceptance of such applications. For the purposes of this section, minor amendments are limited to:

* * * * *

(3) Changes in ownership where the original party or parties to an application either:

- (i) Retain more than a 50 percent ownership interest in the application as originally filed; or
- (ii) Retain an ownership interest of 50 percent or less as the result of gradual governing board changes in a nonstock or membership applicant with little or no effect on such organization's mission. All changes in a governmental applicant are considered minor, provided that the applicant entity remains unchanged.

* * * * *

5. Section 73.872 is amended by revising paragraph (c) introductory text and adding paragraph (c)(5) to read as follows:

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

* * * * *

(c) *Voluntary time-sharing.* If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by electronically submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as minor amendments to the time-share proponents' applications, and shall become part of the terms of the station authorization. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated. Applicants may agree, at any time before the Media Bureau implements the involuntary time-share procedures pursuant to § 73.872(d), to aggregate their points to enter into a time-share agreement. Applicants can only aggregate their points and submit a time-share agreement if each is designated a tentative selectee in the same mutually exclusive group, and if each applicant has the basic

qualifications to receive a grant of its application.

* * * * *

(5) In the event a tentatively accepted time-share agreement is dismissed, the Commission staff will release another public notice, initiating a second 90-day period for all remaining tentative selectees within the affected MX group to enter into either a voluntary time-share arrangement or a universal settlement in accordance with paragraphs (c) or (e) of this Section.

* * * * *

6. Section 73.3572 is amended by revising paragraph (b) to read as follows:

§ 73.3572 Processing TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications

* * * * *

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraphs (a)(1) or (a)(2) of this section, or result in a situation where the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed, and §73.3580 will apply to such amended application. However, a change in ownership is minor if the original party or parties to an application for a noncommercial educational full power television station retain an ownership interest of 50 percent or less in the application as originally filed as the result of a gradual governing board change in a nonstock or membership applicant with little or no effect on such organization's mission. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

* * * * *

7. Section 73.3573 is amended by revising paragraph (a)(1) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

(a) * * *

(1) In the first group are applications for new stations or for major changes of authorized stations. A major change in ownership is one in which the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed, except that a change in ownership is minor if the original party or parties to an application for a reserved channel NCE FM station retain an ownership interest of 50 percent or less in the application as originally filed as the result of a gradual governing board change in a nonstock or membership applicant with little or no effect on such organization's mission. In the case of a Class D or an NCE FM reserved band channel station, a major facility change is any change in antenna location which would not continue to provide a 1 mV/m service to some portion of its previously authorized 1 mV/m service area. In the case of a Class D station, a major facility change is any change in community of license or any change in frequency other than to a first-, second-, or third-adjacent channel. A major facility change for a commercial or a noncommercial educational full service FM station, a winning auction bidder, or a tentative selectee authorized or determined under this part is any change in frequency or community of license which is not in accord with its current assignment, except for the following:

* * * * *

8. Section 73.3598 is amended by revising paragraph (a) introductory text, paragraph (b) introductory text, and paragraph (b)(3), adding paragraph (b)(4), and revising paragraphs (c) and (d) to read as follows:

§ 73.3598 Period of construction.

(a) Except as provided in the last two sentences of this paragraph, each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; low power FM; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. An eligible entity that acquires an issued and outstanding construction permit for a station in any of the services listed in this paragraph

shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file an application for license. For purposes of the preceding sentence, an "eligible entity" shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121 through 201, at the time the transaction is approved by the FCC, and holds

* * * * *

(b) The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee:

* * * * *

(3) A request for international coordination, with respect to an original construction permit for a new DTV station, has been sent to Canada or Mexico on behalf of the station and no response from the country affected has been received, or the licensee or permittee is challenging the response from Canada or Mexico on the grounds that the facility as approved would not permit the station to serve the population that is both approved by the Commission and served by the station's TV (analog) facility to be vacated by June 12, 2009; or

(4) Failure of a Commission-imposed condition precedent prior to commencement of operation.

(c) A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of any pertinent event covered by paragraph (b) of this section, and provide supporting documentation. All notifications must be filed in triplicate with the Secretary and must be placed in the station's local public file. For authorizations to construct stations in the Low Power FM service, on FM channels reserved for noncommercial educational use, and for noncommercial educational full power television stations, the Commission will identify and grant an initial period of tolling when the grant of a construction permit is encumbered by administrative or judicial review under the Commission's direct purview (e.g., petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), or failure of a condition under

paragraph (b)(4) of this section. When a permit is encumbered by administrative or judicial review outside of the Commission's direct purview (e.g., local, state, or non-FCC federal requirements), the permittee is required to notify the Commission of such tolling events.

(d) A permittee must notify the Commission promptly when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God will automatically cease six months from the date of the notification described in paragraph (c) of this section, unless the permittee submits additional notifications at six-month intervals detailing how the act of God continues to cause delays in construction, any construction progress, and the steps it has taken and proposes to take to resolve any remaining impediments. For authorizations to construct stations in the Low Power FM service, on FM channels reserved for noncommercial educational use, and for noncommercial educational full power television stations, the Commission will cease the tolling treatment and notify the permittee upon resolution of either:

- (1) Any encumbrance by administrative or judicial review of the grant of the construction permit under the Commission's direct purview, or
- (2) The condition on the commencement of operations under paragraph (b)(4) of this section.

* * * * *

9. Section 73.7002 is amended by revising paragraph (c) introductory text to read as follows:

§ 73.7002 Fair distribution of service on reserved band FM channels.

* * * * *

(c) For a period of four years of on air operations, an applicant receiving a decisive preference pursuant to this section is required to construct and operate technical facilities substantially as proposed. During this period, such applicant may make minor modifications to its authorized facilities, provided that either: (1) the modification does not downgrade service to the area on which the preference was based, or (2) any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s), and the applicant would continue to qualify for a decisive Section 307(b) preference. Additionally, for a period beginning from the award of a construction

permit through four years of on-air operations, a Tribal Applicant receiving a decisive preference pursuant to this section may not:

* * * * *

10. Section 73.7003 is amended by revising paragraphs (b)(1) and (2), and (c)(3) and adding paragraph (c) (4) to read as follows:

§ 73.7003 Point system selection procedures.

* * * * *

(b) * * *

(1) *Established local applicant.* Three points for local applicants, as defined in § 73.7000, who have been local continuously for no fewer than the two years (24 months) immediately prior to the application filing.

(2) *Local diversity of ownership.* Two points for applicants with no attributable interests, as defined in § 73.7000, in any other broadcast station or authorized construction permit (comparing radio to radio and television to television) whose principal community (city grade) contour overlaps that of the proposed station. The principal community (city grade) contour is the 5 mV/m for AM stations, the 3.16 mV/m for FM stations calculated in accordance with § 73.313(c), and the contour identified in § 73.685(a) for TV. Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

* * * * *

(c) * * *

(3) *Voluntary time-sharing.* If a tie remains after the tie breaker in paragraph (c)(2) of this section, each of the remaining tied, mutually exclusive applicants will be identified as a tentative selectee and must electronically submit, within 90-days from the release of the public notice or order announcing the remaining tie, any voluntary time-share agreement. Voluntary time-share agreements must be in writing, signed by each time-share proponent, and specify the proposed hours of operation of each time-share proponent.

(4) *Mandatory time-sharing.* If a tie among mutually exclusive applications is not resolved through

voluntary time-sharing in accordance with paragraph (c)(3) of this section, the tied applications will be reviewed for acceptability. Applicants with tied, grantable applications will be eligible for equal, concurrent, non-renewable license terms.

(i) If a mutually exclusive group has three or fewer tied, grantable applications, the Commission will simultaneously grant these applications, assigning an equal number of hours per week to each applicant. The Commission will require each applicant subject to mandatory time-sharing to simultaneously and confidentially submit their preferred time slots to the Commission. If there are only two tied, grantable applications, the applicants must select between the following 12-hour time slots: 3 a.m.-2:59 p.m., or 3 p.m.-2:59 a.m. If there are three tied, grantable applications, each applicant must rank their preference for the following 8-hour time slots: 2 a.m.-9:59 a.m., 10 a.m.-5:59 p.m., and 6 p.m.-1:59 a.m. The Commission will require the applicants to certify that they did not collude with any other applicants in the selection of time slots. The Commission will give preference to the applicant that has been local, as defined in §73.7000, for the longest uninterrupted period of time. In the event an applicant neglects to designate its preferred time slots, staff will select a time slot for that applicant.

(ii) Groups of more than three tied, grantable applications will not be eligible for licensing under this section. Where such groups exist, the Commission will dismiss all but the applications of the three applicants that have been local, as defined in §73.7000, for the longest uninterrupted periods of time. The Commission will then process the remaining applications as set forth in paragraph (c)(4)(i) of this section.

* * * * *

11. Section 73.7005 is amended by revising the section heading and paragraph (b), redesignating paragraph (c) as (d), and adding new paragraph (c) to read as follows:

§ 73.7005 Maintenance of Comparative Qualifications

* * * * *

(b) *Technical*. In accordance with the provisions of §73.7002, for a period of four years of on air

operations, an NCE FM applicant receiving a decisive preference for fair distribution of service is required to construct and operate technical facilities substantially as proposed. During this period, such applicant may make minor modifications to its authorized facilities, provided that either: (1) the modification does not downgrade service to the area on which the preference was based, or (2) any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s).

(c) *Point System Criteria.* Any applicant selected based on the point system, § 73.7003, must maintain the characteristics for which it received points for a period of time commencing with the grant of the construction permit and continuing until the station has achieved at least four years of on air operations. During this time, any applicant receiving points for diversity of ownership, § 73.7003(b)(2), and selected through the point system, is prohibited from

- (1) Acquiring any commercial or noncommercial AM, FM, or non-fill-in FM translator station which would overlap the principal community (city grade) contour of its NCE FM station received through the award of diversity points;
- (2) Acquiring any UHF, VHF, or Class A television station which would overlap the principal community (city grade) contour of its NCE television station received through the award of diversity points;
- (3) Proposing any modification to its NCE FM station received through the award of diversity points which would create overlap of the principal community (city grade) contour of such station with any attributable authorized commercial or noncommercial AM, FM, or non-fill-in FM translator station;
- (4) Proposing any modification to its NCE television station received through the award of diversity points which would create overlap of the principal community (city grade) contour of such station with any attributable authorized UHF, VHF, or Class A television station;
- (5) Proposing modifications to any attributable commercial or noncommercial AM, FM, or non-fill-in FM translator station which would create overlap with the principal community (city grade) contour of its NCE FM station received through the award of diversity points; and
- (6) Proposing modifications to any attributable UHF, VHF, or Class A television station which would

create overlap with the principal community (city grade) contour of its NCE television station received through the award of diversity points. This restriction applies to the applicant itself, any parties to the application, and any party that acquires an attributable interest in the permittee or licensee during this time period.

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